

SERVICE DATE – MARCH 5, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35830

SNOHOMISH COUNTY, WA—PETITION FOR DECLARATORY ORDER

Digest:¹ Snohomish County does not need Board authorization to acquire from the Port of Seattle the physical assets of approximately 12 miles of rail line in Snohomish County, Wash. The county would not acquire the right or legal obligation to provide freight rail service, nor would the county be in a position to interfere unduly with freight operations.

Decided: March 3, 2015

On May 29, 2014, Snohomish County (the County), a noncarrier, filed a petition for declaratory order asking the Board to declare that the County's acquisition of the physical assets of approximately 12 miles of rail line owned by the Port of Seattle (the Port) does not require Board authorization under 49 U.S.C. § 10901 and would not cause the County to become a "rail carrier" within the meaning of 49 U.S.C. § 10102(5). The County states that the Board previously held that the Port's acquisition of the facilities at issue would not cause the Port to become a rail carrier under § 10102(5) because that transaction comported with the terms and conditions set out in the line of cases beginning with Maine, Department of Transportation—Acquisition & Operation Exemption—Maine Central Railroad (State of Maine), 8 I.C.C. 2d 835 (1991).² See Port of Seattle—Acquis. Exemption—Certain Assets of BNSF Ry., FD 35128, slip op. at 5 (STB served Oct. 27, 2008). The County argues that because it is purchasing the Port's interest in the facilities and is not making any changes to the agreements that were before the Board when it determined that the Port would not become a rail carrier, it cannot acquire any common carrier rights.³

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² For a discussion of the Board's State of Maine standard see Florida Department of Transportation—Petition for Declaratory Order—Rail Line of CSX Transportation, Inc. Between Riviera Beach & Miami, Florida, FD 35783, slip op. at 6-7 (STB served Oct. 1, 2014).

³ Pet. 6.

The County, a political subdivision of the State of Washington (the State) and a noncarrier, has entered into a Real Estate Purchase and Sale Agreement (PSA) with the Port, a municipal corporation of the State. Pursuant to the PSA, the County would acquire from the Port certain rail track, commercial and industrial structures, fixtures, and real property located between approximate milepost 26.38 and approximate milepost 38.25 in Snohomish County, Wash. (the Line),⁴ but no common carrier right or obligation with respect to the Line.⁵ The Port acquired these assets from BNSF Railway Company (BNSF) in 2008 and the Board found that, as a result of that transaction, BNSF would retain an exclusive freight rail easement, and the Port would not become a rail carrier subject to Board jurisdiction. Port of Seattle, slip op. at 3, 5.⁶

The County submitted copies of the Partial Assignment and Assumption of Operations and Maintenance Agreement,⁷ an Executed Copy of the O&M Agreement, and a letter from the Port confirming (1) that the executed O&M Agreement and the executed quitclaim deeds have no material changes from the drafts submitted to the Board in the Port of Seattle proceeding, and (2) that the Port did not enter into any amendments to the O&M Agreement.

Exercising our discretionary authority under 49 U.S.C. § 721 and 5 U.S.C. § 554(e), we will issue a declaratory order to remove uncertainty in this matter. Based on our review of the transaction documents, we find that the County would step into the Port's shoes with respect to ownership of the physical assets of the Line. The relevant documents are materially the same as those the Board reviewed in Port of Seattle, and the record does not include any facts here that would materially alter the analysis of those documents under State of Maine. Thus, the proposed transaction would not be an acquisition of a railroad line that would require Board authorization under 49 U.S.C. § 10901, or an exemption under 49 U.S.C. § 10502, and would not cause the County to become a rail carrier under the Interstate Commerce Act.

⁴ In addition to the physical assets of the Line, the County would acquire a non-exclusive easement to maintain a 200-foot portion of rail right-of-way over the Snohomish River Bridge for pedestrian access/trail purposes. The County represents that the easement would not permit it to materially interfere with the freight operator's right to maintain the bridge for common carrier freight rail purposes. Id. at 2 n.3.

⁵ Id. at 1-2. The County also states that it anticipates developing a trail on the Line, but that any trail use could not be inconsistent with the freight operating rights and obligations on the Line. Id. at 4. These are the same rights previously obtained by the Port in the Port of Seattle proceeding.

⁶ BNSF sold its interests in the Line, including its exclusive freight rail easement, to GNP Rly. Inc. (GNP). GNP Rly Inc.—Acquis. & Operation Exemption—BNSF Ry., FD 35213 (STB served Feb. 13, 2009). Eastside Community Rail later acquired the assets, lease, and operating rights that GNP had acquired from BNSF. Eastside Cmty. Rail—Acquis. & Operation Exemption—GNP RLY, Inc., FD 35692 (STB served Nov. 23, 2012).

⁷ The County explains that it is a partial assignment and assumption because the County would not acquire the entire rail line that is subject to the O&M Agreement. Pet. 2 n.2.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The County's petition for declaratory order is granted as discussed above.
2. This decision will be effective on its service date.

By the Board, Acting Chairman Miller and Vice Chairman Begeman.